

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

FILED
2004 SEP 3 P 2:29

JOHN J. BAUGHAN)
Plaintiff)
v.)
KEITH PELLETIER, TODD OLIVER)
FRANCIS NAPERT and SCOTT)
ARLINGTON)
Defendants)

Civil Action
No. 04-10704RWZ

**PLAINTIFF'S MOTION FOR LEAVE TO FILE
SECOND AMENDED COMPLAINT**

Plaintiff moves this Honorable Court for leave to file his Second Amended Complaint, a copy of which is annexed hereto.

As grounds therefore, plaintiff states that the defendants did not move to dismiss the original complaint. Rather, the Court, sua sponte ordered the plaintiff to remove the insurance company as a defendant and to streamline the complaint. In attempting to do so, it appears that the plaintiff only partially succeeded and the way the complaint has been drafted appears to have created additional problems that the defendants now are attempting to remedy by seeking dismissal without having first availed themselves of the required conference beforehand.. Rather than filing a Motion to Strike the Motion to Dismiss for failure to conduct a conference, new counsel has taken the opportunity to completely overhaul and streamline the complaint and requests that the Court grant him leave to file it and either take no action on or deny the Motion to Dismiss.

The Town of Westport, the Town Selectmen and the Chief of Police have been dropped as defendants. All of the duplicative counts have been eliminated and all that remain are the individual police officers and their supervisor who are now sued in their individual and official capacity for conduct engaged in under color of law.

The defendants will not be prejudiced by the Court's allowing the plaintiff to file this Second Amended Complaint.

WHEREFORE, plaintiff requests that the Court allow this Motion and accept the Second Amended Complaint to be filed.

Respectfully submitted



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Certificate of Service

I hereby certify that the above document
was served upon the undersigned for each other party
by mail on 8/30/04.

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